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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Lockridge v. Scribner, No. 04-56059

SILVERMAN, Circuit Judge, dissenting:

The police officers testified that they fired at Lockridge when he suddenly turned and pointed a gun at them. The passers-by testified that they did not see whatever precipitated the shooting. And Lockridge himself testified that he never aimed at or shot at the officers at all, in self-defense or otherwise. On this record, the state court ruled, as a matter of state law,[1] that the evidence of self-defense was too slight to warrant a self-defense instruction. I am hard-pressed to see how this ruling was even erroneous, much less an unreasonable application of, or contrary to, federal law as determined by the United States Supreme Court.

The majority's reliance on *Mathews v. United States*, 485 U.S. 58 (1988) is terribly mistaken. *Mathews* is not a constitutional case. In fact, the constitution is not even mentioned in *Mathews*, except to acknowledge that the entrapment defense is "not of 'constitutional dimension.'" *Id.* at 66 (quoting *United States v. Russell*, 411 U.S. 423, 433 (1973)). *Mathews* was a direct appeal interpreting the federal law of entrapment. The question was whether a federal defendant must admit to all of the elements of an offense as a prerequisite to receiving an

[1] *See People v. Flannel*, 25 Cal. 3d 668, 674 (Cal. 1979).

entrapment instruction in federal court. The Court ruled that he does not. *Mathews*, 485 U.S. at 64-66. In no way, shape or form does *Mathews* hold that, as a matter of constitutional right, a theory-of-defense instruction must be given no matter how weak the evidence.

The majority's reliance on *Crane v. Kentucky*, 476 U.S. 683 (1986), is even more puzzling. That case has nothing whatsoever to do with jury instructions. In *Crane*, the Court held that the exclusion of trial testimony about the circumstances of a defendant's confession violated due process where the defense contended that the confession was unreliable.

In short, the majority has cited no Supreme Court case establishing a constitutional right to a self-defense instruction in these circumstances. The California Court of Appeal's decision is simply not contrary to federal law as determined by the Supreme Court. Whether Lockridge was entitled to the self-defense instruction given the evidence adduced is a question of California criminal law of which the California Supreme Court is the ultimate expositor. "It is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *see also Bradshaw v. Richey*, 126 S.Ct. 602, 604 (2005) ("[A] state court's interpretation of state law, including one announced on direct appeal of the challenged conviction,

binds a federal court sitting in habeas corpus.").

Because the California Court of Appeal's decision was not contrary to or an unreasonable application of federal law as determined by the Supreme Court, a writ of habeas corpus should not have been granted. I respectfully dissent.